



概览：中国电子商务发展 和知识产权保护的挑战

Overviews: Growth of E-Commerce and Challenge of IPR Protection

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一、中国电子商务发展简况

I. Development of E-commerce in China

- 快速增长：近10年电商交易额增长10多倍，网络零售额增长170多倍

Rapid Expansion: 10-fold increase in E-commerce trade volume and 170-fold increase in online retailing sales in last 10 years

- 2015年数据：Figures of Year 2015:

- 电商交易总额20.8万亿元，同比增长约27%

Total E-commerce trade volume reached 20.8TN RMB (3.3TN USD), 27%↑ YOY

- 网络零售交易额4万亿元，同比增长约39%，占社会消费品零售总额13%

Online retailing sales reached 4TN RMB(635BN USD), 39%↑ YOY, 13% of total retailing sales

- “双十一”当天网络零售额达到1229.4亿元，共产生6.4亿件包裹

Daily online retailing sales reached 129.4BN RMB (20BN USD) on 11/11 (shopping festival), 640 Million parcels generated

中国电商热点:

- 互联网+
- 线上线下融合
- 大数据
- 云计算
- 移动互联网
- 农村电商
- 跨境电商
- 共享经济

Key areas of development:

Internet+

O2O

Big Data

Cloud Computing

Mobile Internet

Rural E-commerce

Cross-Border E-commerce

Sharing Economy



二、中国电子商务立法现状

II. Present E-commerce legislation in China

- 电子商务与法律 E-commerce and Law

- 电子商务依赖法治化营商环境

Rule of Law is essential to the development of E-commerce

- 电子商务对现有法律带来挑战

E-commerce also poses significant challenge to the existing legal system

- 中国电子商务立法特点 Characteristics of Chinese E-Commerce Legislation

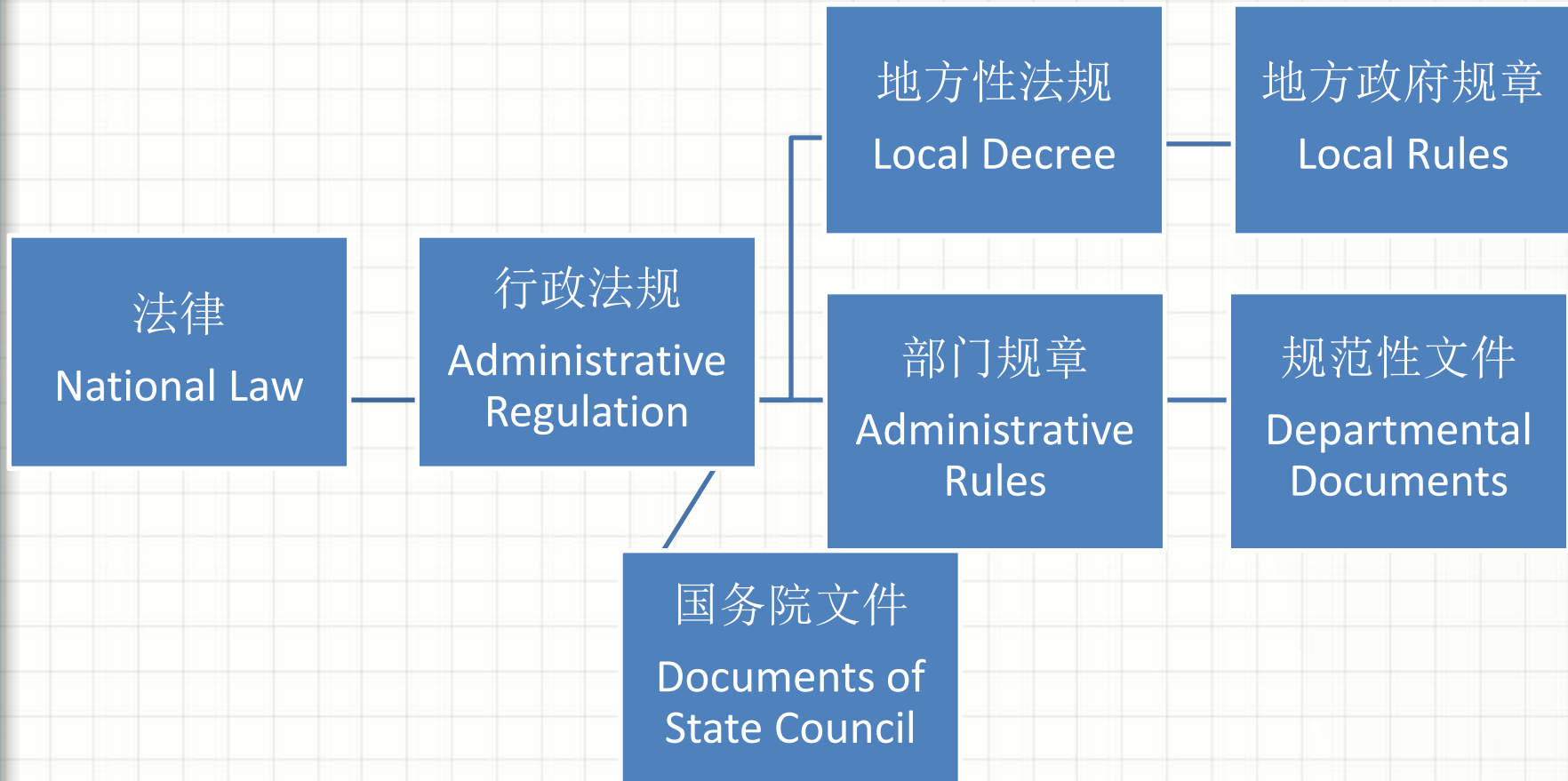
- 问题导向、市场导向 Problem Oriented/Market Oriented

- 不急于进行管制 avoid over-regulation

- 技术中立 technological neutrality

中国电子商务法律体系:

Chinese E-Commerce Hierarchy of Law:



有关电子商务的专门立法

Specific Legislation on E-commerce

法律

National Law

- 《电子签名法》（2005）
- Electronic Signature Law（2005）

有关电子商务的专门立法

Specific Legislations on E-commerce

有关国务院文件

Documents of State Council

- 《关于加快电子商务发展的若干意见》（2005）

Several Opinions on Promoting the Development of E-commerce（2005）

- 近两年来，国务院就此印发了多项文件：电子商务发展、跨境电子商务、“互联网+”、大数据发展、线上线下互动、互联网领域侵权假冒行为治理、农村电子商务

Between 2014-2015, the State Council issued documents on:

Promoting E-commerce, Cross-border E-commerce, Internet+, Big Data, O2O, Cracking down IPR infringement in Internet-related area, Rural E-commerce

有关电子商务的专门立法

Specific Legislation on E-commerce

部门规章和规范性文件

Departmental Administrative Rules and Documents

- 商务部 MOFCOM

- 《网络零售第三方平台交易规则制定程序规定（试行）》（2014）

Interim Provisions on Procedures for Formulating Online Retailing Platform Rules (2014)

- 《关于网上交易的指导意见（暂行）》（2007）

Interim Guiding Opinions on Online Trading (2007)

- 电子商务国家和行业标准

National and Industry Standard

有关电子商务的专门立法

Specific Legislations on E-commerce

部门规章和规范性文件

Departmental Administrative Rules and Documents

- 工商总局 SAIC

- 《网络商品交易及服务行为管理暂行办法》（2010）

Interim Measures for the Administration of Online Trading and Service (2010)

- 《网络交易管理办法》（2014）

Measures for the Administration of Online Trading (2014)

- 《网络商品和服务集中促销活动管理暂行规定》（2015）

Interim Provisions on the Administration of Centralized Online Promotion for Goods and Services (2015)

有关电子商务的专门立法

Specific Legislations on E-commerce

地方性法规

Local Decree

- 《广东省电子交易条例》（2002）

Regulation of Guangdong Province on Electronic Trading
(2002)

- 《北京市信息化促进条例》（2007）

Regulation of Beijing on the Promotion of Informatization
(2007)

- 《上海市促进电子商务发展规定》（2008）

Provisions of Shanghai on Promotion of E-commerce (2008)

涉及电子商务的其他立法

Other Legislations Related to E-commerce

- 民商事法律

- Civil Laws

- 《合同法》 Contract Law
 - 电子合同 Electronic Contract
 - 《侵权责任法》 Tort Law
 - 网络侵权责任 Liability of Internet Infringement
 - 《著作权法》和《信息网络传播权保护条例》 Copyright Law and Regulation on the Protection of the Right to Network Dissemination of Information
 - 信息网络传播权 Right to network dissemination of information

涉及电子商务的其他立法

Other Legislations Related to E-commerce

- 消费者权益保护相关法律

Laws related to Consumer Protection

- 《消费者权益保护法》 Law on the Protection of Consumer Rights and Interests
 - 网购七天无理由退货 7-day unconditional return for online shopping
- 《广告法》 Advertisement Law
 - 网络广告监管和网络广告服务提供者责任 Regulation of online advertisement and responsibility of service provider
- 《食品安全法》 Food Safety Law
 - 电子商务食品销售监管和平台责任 Supervision of online food sale and responsibility of platforms

涉及电子商务的其他立法

Other Legislations Related to E-commerce

- 电信和网络安全相关法律

Regulations related to Telecommunication and Network Safety

- 全国人大常委会《关于维护互联网安全的决定》 NPC Standing Committee's Decision on Safeguarding Network Safety、《关于加强网络信息保护的決定》 Decision on Strengthening Protection of Network Information、《计算机信息系统安全保护条例》 Regulation for Safety Protection of Computer Information Systems
 - 网络安全和个人信息保护 Network safety and Personal Information Protection
- 《互联网信息服务管理办法》 Regulation on Internet Information Service、《计算机信息网络国际联网管理暂行规定》 Interim Regulation on the Management of International Networking of Computer Information、《电信条例》 Telecommunication Regulations
 - 互联网和电信管理 regulation of Internet and Telecommunication

三、《电子商务法》起草情况

III. Drafting of China E-Commerce Law

进展 Progress

- 2013年列入全国人大立法计划
- Launched in 2013 as legislative project of NPC
- 全国人大财经委负责起草
Drafted by NPC Finance and Economics Committee
- 已形成专家草案 1st Draft by experts in place
- 6月将在上海举行国际研讨会
International seminar to be held in June in Shanghai

草案宗旨、定位

Objective, Positioning of the 1st Draft

- 宗旨 Objective

- 促进发展 Promoting development

- 规范秩序 Regulating market order

- 保障权益 Safeguarding rights and interests

- 定位 Positioning

- 基本法 Basic law of E-commerce

- 综合法 Comprehensive law of E-commerce

立法难点

Difficulty in Drafting

- 如何界定调整范围?
How to define the scope of application?
- 如何维护可信的交易环境?
How to maintain a trustworthy E-commerce environment?
- 如何合理界定第三方平台的权利和责任?
How to reasonably define the rights and obligations of the E-commerce platforms?
- 如何创新监管跨境电子商务?
How to reform regulation to accommodate the development of cross-border E-commerce?



四、网络环境下知识产权保护

IV. IPR Protection under Internet Environment

(一) 现行国内立法 Present Legislation in China

1、[《著作权法》 Copyright Law](#) (Art. 10, 38. 42)

2、[《信息网络传播权保护条例》](#)

[Regulation on the Protection of the Right to Network Dissemination of Information](#)

3、最高人民法院¹关于审理侵害信息网络传播权民事纠纷案件适用法律若干问题的规定》
Judicial Interpretation on Several Issues of the Application of Law for the Trial of Civil Dispute Case of Infringing the Right of Dissemination of Information.

(二) 立法修改 Drafting

1、[《著作权法（修订草案送审稿）》](#)

[Copyright Law \(Revised Draft for Examination\)](#)

2、[《专利法修订草案（送审稿）》](#)

[Patent Law \(Draft for Deliberation\)](#)

(三) 国际条约 International Treaties

1、[《世界知识产权组织版权条约》](#)

[WIPO Copyright Treaty](#)

2、[《世界知识产权组织表演和录音制品条约》](#)

[WIPO Performances and Phonograms Treaty](#)

司法解释：《最高人民法院关于审理侵害信息网络传播权民事纠纷案件适用法律若干问题的规定》

Judicial Interpretation

- 第四条 共同侵权行为
- **Article 4 joint infringement**
- 第七条 间接侵权责任
- **Article 7 Secondary Liability**
- ——教唆侵权、帮助侵权
- Instigating infringement、Assisting in infringement
- 第八条至第十三条 **Article 8-13**
- 过错：明知或应知
- Faults: clearly knows or should have known
- 经济利益与注意义务
- Economic benefits& Duty of care

(二) 立法修改 Drafting

2、《著作权法（修订草案送审稿）》

Copyright Law (Revised Draft for Examination)

- **Rule on technical protection measures**
- **Rule on rights of management information**
- **Rule on notification and delete**
- **Joint liabilities of ISP under certain circumstances**
- **Joint liabilities for assisting or instigating**

(二) 立法修改 Drafting

2、《专利法修订草案（送审稿）》

Patent Law (Draft for Deliberation)

- **Introduced the rule on notification and delete**
- **Joint liabilities for ISP under certain circumstances**
- **Joint liabilities for assisting or instigating**
- **Punitive compensation rule**

(二) 立法修改 **Drafting**

- Guideline on Excluding or Restricting Competition by Abuse of IPR
- The Interim Rule on Administration of APP by MIIT(published for soliciting opinion, Nov, 2015)

(三) 国际条约 **International Treaties**

- 《世界知识产权组织版权条约》 **WIPO Copyright Treaty**
- 《世界知识产权组织表演和录音制品条约》
WIPO Performances and Phonograms Treaty

五、网络环境下知识产权保护的挑战

V. Challenges of IPR Protection under Digital Environment

- Rapid development vs IPR protection
- Privacy (California New bill on protection of Privacy, enforcement agency must be granted before asking the data online)
- Security protection (Apple vs FBI, backdoor of Iphone)
- Interactions among right holder, Wholesaler, Retailer online, ISP, Finance Service provider, Advertiser, Courier, the Public



谢谢!

Thank You!